

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RAMIRO AGUILAR
Claimant

**ALUMINUM CO OF AMERICA
DAVENPORT WORKS**
Employer

**APPEAL 20A-UI-05830-HP-T
ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 07/28/19
Claimant: Appellant (1)**

Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant Ramiro Aguilar filed an appeal from a September 6, 2019 (reference 02) unemployment insurance decision that denied benefits based upon his discharge from employment from Aluminum Company of America Davenport Works (“Arconic”). Notices of hearing were mailed to the parties’ last known addresses of record for a telephone hearing scheduled for July 10, 2020. Aguilar appeared and testified. Keli Price appeared and testified on behalf of Arconic. I took administrative notice of Aguilar’s unemployment insurance benefits records maintained by Iowa Workforce Development. No exhibits were presented before or at the time of the hearing from either party. After the record was closed Price sent exhibits to the agency. I disregarded the exhibits because they were not provided before the record was closed.

ISSUES:

Was the appeal timely?
Was the Claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Aguilar commenced full-time employment with Arconic on June 10, 2019. Arconic provided Aguilar with one week of training on human resources and safety policies before he worked in the production facility. Aguilar was told that sleeping on the job would not be tolerated. For the first 700 hours of work Aguilar was a probationary employee. At the time of his discharge, Aguilar was a probationary employee and he was not a member of the union due to his probationary status. Aguilar’s direct supervisor was Aurelio Trebino. Arconic has 2,600 employees at the Davenport facility.

Aguilar worked the night shift for Arconic from 6:00 p.m. until 6:00 a.m. On July 30, 2019, Price, an HR business partner, called Aguilar into her office with Stephanie Stammer, a supervisor who worked the night shift. Price had received an anonymous text message sent on July 8, 2019, that Aguilar had been sleeping on the job, and photographs of Aguilar sleeping on the job on two occasions sent on July 27, 2019. Price testified Aguilar admitted he had been sleeping on the job and she said he was remorseful. Aguilar reported other employees slept on the job and he wanted

to remain employed. Price informed Aguilar if he had seen other employees sleeping on the job he should have brought the issue to management. Price determined Aguilar was not a good fit for the company because he was sleeping on the job during his probationary period and terminated his employment.

Price testified Aguilar worked in the ingot department, which contains six to eight employees overnight. The night shift supervisor spends most of the supervisor's time in the molten metal department because the molten metal department has more employees and the jobs in that department are more dangerous than the jobs in other areas of the plant.

Price testified the photographs show Aguilar sleeping with his feet up behind computer equipment. Price believes his actions were intentional because he had found an area to sleep where there were not any people. He did not fall asleep in the lunchroom, or some other public area. She also believed he intentionally took a nap because his feet were elevated when he was supposed to be performing work for the employer where he earned \$30 per hour.

Aguilar denied sleeping on the two dates depicted in the photographs and reported his coworker took pictures of him and he told his coworker to stop. Aguilar admitted he slept on the job while working for Arconic, but reported other people slept on the job, including his supervisor, Nick LaFoon. Price denied LaFoon was a supervisor and reported he was a lead worker who would make sure people were working where they should be, but he was not a supervisor. Price testified Aguilar's immediate supervisor was Aurelio Trebino.

Aguilar reported he could not recall receiving the initial decision in this case dated September 6, 2019, reference 02. Aguilar reported he filed an appeal when he learned of the decision.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.6(2) provides:

A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. . . . Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. . . .

The ten calendar days for appeal begins running on the mailing date. The "decision date" found in the upper right-hand portion of the representative's decision is presumptive evidence of the date of mailing, unless otherwise corrected immediately below that entry. *Gaskins v. Unemployment Compensation Bd. of Rev.*, 429 A.2d 138 (Pa. Comm. 1981); *Johnson v. Bd. of Adjustment*, 239 N.W.2d 873 (Iowa 1976). Aguilar denied receiving a copy of the decision from Iowa Workforce Development. I find his appeal was timely under the facts of this case.

Under Iowa Code section 96.5(2)a,

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits: . . .

2. *Discharge for misconduct.* If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The disqualification shall continue until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 Iowa Administrative Code 24.32(1)a, defines the term "misconduct" as,

a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the Iowa Legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 558 (Iowa 1979).

871 Iowa Administrative Code 24.32(4) also provides,

Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

And 871 Iowa Administrative Code 24.32(8) provides:

Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

Unemployment statutes should be interpreted liberally to achieve the legislative goal of minimizing the burden of involuntary unemployment. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6, 10 (Iowa 1982). The employer bears the burden of proving the employee engaged in disqualifying misconduct. *Id.* at 11. The issue is not whether the employer made a correct decision in separating the claimant, but whether the claimant is entitled to

unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262, 264 (Iowa Ct. App. 1984)

Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits; such misconduct must be "substantial." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806, 808 (Iowa Ct. App. 1984) The definition of misconduct in the administrative rule focuses on deliberate, intentional, or culpable acts by the employee. *Id.* When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* at 808-09. Negligence does not constitute misconduct unless it is recurrent in nature; a single act is not disqualifying unless it is indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731, 735 (Iowa Ct. App. 1986) Additionally, poor work performance is not misconduct in the absence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211, 213 (Iowa Ct. App. 1988). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 666-69 (Iowa 2000) What constitutes misconduct justifying termination of an employee and what misconduct warrants a denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679, 680 (Iowa Ct. App. 1988) Instances of poor judgment are not misconduct. *Richers v. Iowa Dep't of Job Serv.*, 479 N.W.2d 308, 312 (Iowa 1991); *Kelly v. Iowa Dep't of Job Serv.*, 386 N.W.2d 552, 555 (Iowa Ct. App. 1986)

While Aguilar denied he was sleeping on the job in the photographs taken of him on two different days, he did admit he slept on the job and that he had made a mistake. The act of sleeping on the job is justification for termination. The court in *Hurtado v. Iowa Department of Job Service*, 393 N.W.2d 309 (Iowa 1986) held that while sleeping on the job can be misconduct, it is the agency's responsibility to determine as a fact whether the conduct was a willful and wanton disregard of the employer's interests. Aguilar admitted he slept on the job when he was supposed to be working. I do not find his testimony credible that management was aware people were sleeping on the job and approved of it reasonable and consistent with the other evidence I believe. I also believe he was sleeping in the photographs Price received showing him sleeping on two separate occasions. Aguilar was not at his workstation. He was sitting in a chair behind computer equipment, out of sight, with his feet up. Under these circumstances he could not fulfill his job responsibilities. Any reasonable person would know sleeping on the job would place one's job in jeopardy, which Aguilar should have known. See also *Welborn v. City of Hawarden*, 20BUI-01539. Aguilar was discharged for a disqualifying reason. Benefits are denied.

DECISION:

Regular Unemployment Insurance Benefits Under State Law and Remand

The September 6, 2019 (reference 02) unemployment insurance decision denying unemployment insurance benefits is affirmed. Claimant was discharged from employment due to job-related misconduct. Benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. During the hearing Aguilar testified he has earned ten times his weekly benefit amount since his discharge. Ten times the weekly benefit amount of \$397 is \$3,970. The Wage-A electronic record of the claimant's wages lists \$2,250 in wages for the first quarter of 2020, but does not list any

wages for the second quarter of 2020. The matter is remanded to the Tax Bureau for investigation of missing wages.

Pandemic Unemployment Assistance (“PUA”) Under the Federal CARES Act

Even though the claimant is not eligible for regular unemployment insurance benefits under state law, the claimant may be eligible for federally funded unemployment insurance benefits under the CARES Act. Section 2102 of the CARES Act creates a new temporary federal program called Pandemic Unemployment Assistance (“PUA”) that may provide up to 39 weeks of unemployment benefits. An individual receiving PUA benefits may also receive an additional \$600 weekly benefit amount under the Federal Pandemic Unemployment Compensation program if the individual is eligible for PUA benefits for the week claimed. This decision does not address whether the claimant is eligible for PUA. If the claimant wishes to receive PUA benefits, the claimant must apply for PUA, as noted in the instructions provided in the “Note to Claimant” below:

Note to Claimant: If this decision determines you are not eligible for regular unemployment insurance benefits and you disagree with this decision, you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (“PUA”). **You will need to apply for PUA to determine your eligibility under the program. Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.** This decision denies benefits. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.



Heather L. Palmer
Administrative Law Judge
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July 20, 2020
Decision Dated and Mailed

hlp/sam